

OCT 24 2006

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

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SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 437

DATE REFERRED: JUNE 8, 2006

DATE ACTIVATED: JUNE 20, 2006

EXPIRATION OF SOL: OCTOBER 2008

SOURCE:

RESPONDENTS:

Thomas W. Noe
Unknown Respondents

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(3)(A)
2 U.S.C. § 441f
11 C.F.R. § 110.1(b)(1)
11 C.F.R. § 110.5(b)(1)(i)
11 C.F.R. § 110.4(b)(1)

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

materials include a copy of a three-count indictment by a federal grand jury charging Thomas W. Noe with: (1) conspiracy to make illegal campaign contributions, (2) knowingly and willfully making \$45,400 in illegal conduit contributions to President Bush's 2004 re-election campaign, and (3) knowingly and willfully causing Bush-Cheney '04, Inc. to file a false statement to the Federal Election Commission. also

1 includes a copy of a document entitled, Minutes of a Criminal Proceeding, that reflects that on
2 May 31, 2006, Mr. Noe pled guilty to each of the three counts in the indictment.¹ On September
3 12, 2006, Mr. Noe was sentenced to 27 months in prison, a \$136,200 fine, two years of
4 supervised release, 200 hours of community service, and a \$300 special assessment.

5 Based on a review of the information as well as publicly available
6 information, Mr. Noe appears to have violated the Federal Election Campaign Act of 1971, as
7 amended ("the Act"), by knowingly and willfully making contributions in the name of others and
8 by exceeding the Act's contribution limits. Accordingly, this Report recommends that the
9 Commission: (1) open a Matter Under Review; (2) find reason to believe Thomas W. Noe
10 knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a)(1)(A) and (a)(3)(A); (3) find
11 reason to believe unknown respondents (the conduits and super-conduits) violated 2 U.S.C.
12 § 441f; and (4) ² Despite the fact that Mr. Noe pled
13 guilty to knowingly and willfully making \$45,400 in illegal conduit contributions and has been
14 sentenced to time in prison and criminal fines for his activities, we believe the Commission
15 should conduct an investigation in this matter because the criminal plea did not identify or
16 address the liability of the 24 conduits and super-conduits. This Office will seek to obtain
17 documents and other information from the criminal authorities to eliminate duplicating efforts as
18 much as possible.

¹ Mr. Noe also has been indicted on 53 state charges related to his handling of a \$50 million investment in rare coins for the Ohio Bureau of Workers' Compensation in what is popularly known as the "coingate" scandal. He has been charged with one count of racketeering, 11 counts of theft, 11 counts of money laundering, eight counts of tampering with public records and 22 counts of forgery. All charges are felonies. If convicted on all counts, he could face 172 ½ years in prison. See <http://www.northcountrygazette.org/articles/021406OhioEmbezzlement.html> (visited August 4, 2006). Mr. Noe's trial on these state charges commenced on October 10, 2006.

² This Report does not address counts one and three of the indictment as the criminal charges of conspiracy and defrauding the United States are not within the jurisdiction of the Commission.

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II. FACTUAL AND LEGAL ANALYSIS

A. *Thomas W. Noe*

On October 27, 2005, in the United States District Court for the Northern District of Ohio, Mr. Noe was indicted on charges of conspiracy, making illegal conduit contributions, and causing a false statement to be made to the Federal Election Commission. Specifically, the indictment states that on or about October 30, 2003, Bush-Cheney '04, Inc. ("the Committee" or "the campaign") hosted a campaign fundraiser ("the fundraiser") at the Hyatt Regency hotel in Columbus, Ohio, to which the admission fee was a \$2,000 contribution – the maximum amount an individual could give to Bush-Cheney '04, Inc. Mr. Noe and his wife had each already contributed \$2,000 to the Committee on August 12, 2003. The indictment states that in order to fulfill a written pledge to raise \$50,000 for the campaign at the fundraiser, Mr. Noe used \$45,400 of his funds to make contributions over the legal limits and concealed the true source of the contributions by making them in the names of other individuals, known as "conduits." According to the indictment, Mr. Noe also recruited other individuals, referred to in the indictment as "super-conduits," who not only acted as conduits but also recruited additional conduits and passed funds from Mr. Noe to those additional conduits.

The indictment alleges that: (1) Mr. Noe requested that each conduit contribute money to the Committee in his or her own name and attend the fundraiser; (2) Mr. Noe provided funds from his National City Bank account for 24 conduits and super-conduits as an advance on, or reimbursement for, their contributions; and (3) he took steps to conceal the activity by making payments to several conduits in amounts slightly below the amount of the conduits' contributions, and instructing several conduits that, if asked in the future about the payments,

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they should lie and say the payments were a loan from Mr. Noe.³ With respect to the specific transactions, the indictment alleges that between on or about October 22, 2003, and on or about November 3, 2003, Mr. Noe provided nine checks from his National City Bank account to the conduits listed in Table A below as an advance on or reimbursement for their contributions to the Committee, and the conduits deposited these checks into bank accounts they owned or controlled.

TABLE A

CONDUIT	DATE OF CHECK FROM NOE	AMOUNT OF CHECK FROM NOE	DATE OF DONATION	AMOUNT OF DONATION
1	10/22/03	\$1,750	10/22/03	\$2,000
2	10/23/03	\$1,950	10/23/03	\$2,000
3,4	10/23/03	\$4,000	10/24/03	\$4,000
5	10/23/03	\$1,950	10/24/03	\$2,000
6, 7	10/23/03	\$3,900	10/24/03	\$4,000
8, 9	10/23/03	\$3,750	10/31/03	\$3,900
10	10/24/03	\$2,000	10/24/03	\$2,000
11, 12	10/27/03	\$3,900	10/26/03	\$4,000
13	10/30/03	\$1,900	11/3/03	\$2,000

The indictment states that on or about the dates listed in Table B below, Mr. Noe provided two checks to two super-conduits (#14 and #17) who accepted the money and contributed a portion of the funds to the Committee in their own names, and also acted as super-conduits by writing checks themselves to five additional conduits listed in Table B as an advance on or reimbursement for contributions those conduits made to the Committee, and the conduits and super-conduits deposited these checks into accounts they owned or controlled.

³ According to the indictment, all but one of the conduits and super-conduits contributed the maximum permissible amount, with some adding small amounts of their own money to what Mr. Noe gave them; and all but one of them attended the fundraiser.

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TABLE B

CONDUIT or SUPER- CONDUIT	DATE OF CHECK	AMOUNT OF CHECK	DATE OF DONATION	AMOUNT OF DONATION
14 (super-conduit)	10/23/03 (from NOE)	\$6,000	11/3/03	\$2,000
15	10/23/03 (from #14)	\$2,000	10/23/03	\$2,000
16	10/24/03 (from #14)	\$2,000	10/23/03	\$2,000
17 (super-conduit), 18	10/23/03 (from NOE)	\$14,300	10/24/03	\$4,000
19, 20	11/5/03 (from #17)	\$3,750	10/24/03	\$4,000
21, 22	10/27/03 (from #17)	\$3,500	10/14/03	\$4,000
23, 24	10/27/03 (from #17)	\$3,900	10/31/03	\$4,000

According to the indictment, conduits and super-conduits filled out donor cards and other contributor forms for the fundraiser stating that they were making contributions themselves with their personal funds when, in fact, they used Mr. Noe's funds to make contributions; and consequently, on January 29, 2004, the Committee filed a 2003 Year End Report with the Commission that "unknown to Bush-Cheney, '04, Inc." incorrectly identified the 24 conduits and super-conduits as the sources of the \$45,400 in contributions to the Committee.

On May 31, 2006, Mr. Noe pleaded guilty to the charges in the indictment.

According to a DOJ press release, Mr. Noe admitted during his guilty plea hearing that in October 2003 he made contributions to Bush-Cheney '04, Inc. over and above the limit established by the Act and disguised the contributions by recruiting and providing money to friends and associates who then used Noe's money to make contributions in their own name; that he contributed \$45,400 of his own money through 24 such conduits; and that to avoid suspicion, he gave several conduits checks in amounts slightly less than the maximum allowable amount and instructed several conduits to falsely characterize his payments to them as loans. DOJ Press

1 Release dated May 31, 2006, located at [http://www.usdoj.gov/opa/pr/2006/May/06_crm_337.](http://www.usdoj.gov/opa/pr/2006/May/06_crm_337.html)
2 [html](http://www.usdoj.gov/opa/pr/2006/May/06_crm_337.html) (visited August 4, 2006).

3 Based on the foregoing information, Mr. Noe appears to have knowingly and willfully
4 violated the Act. The knowing and willful standard requires knowledge that one is violating the
5 law. *See Federal Election Commission v. John A. Dramesi for Congress Committee*, 540 F.
6 Supp. 985, 987 (D. N.J. 1986). An inference of a knowing and willful act may be drawn "from
7 the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*,
8 916 F.2d 207, 214-15 (5th Cir. 1990). *Id.* at 214-15. Based on Mr. Noe's admission that he
9 deliberately disguised his actions in this matter, as well as the conduct supporting his admission,
10 this Office recommends that the Commission open a MUR and find reason to believe that
11 Thomas W. Noe: (1) knowingly and willfully violated 2 U.S.C. § 441f by making contributions
12 in the name of others; (2) knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A) by making
13 contributions to Bush-Cheney '04, Inc. that exceeded \$2,000; and (3) knowingly and willfully
14 violated 2 U.S.C. § 441a(a)(3)(A) by making contributions to Bush-Cheney '04, Inc. during the
15 period between January 1, 2003 and December 31, 2004, that exceeded the individual limit of
16 \$37,500.⁴

⁴ The Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, amended subparagraphs 441a(a)(1)(A) and 441a(a)(3). Section 441a(a)(1)(A) was revised to increase the amount persons may contribute to Federal candidates to \$2,000 per election. Under former Section 441a(a)(1)(A), the limit was \$1,000. Section 441a(a)(3) was revised to establish new bi-annual aggregate limits that permit individuals to make, *inter alia*, up to \$37,500 in contributions to candidates and their authorized committees. Under former 2 U.S.C. § 441a(a)(3), individuals were permitted to make no more than \$25,000 in aggregate contributions per calendar year.

B. The Conduits and Super-Conduits

The information in Mr. Noe's indictment indicates that the conduits and super-conduits violated the Act by permitting their names to be used to effect the making of a contribution in the name of another, and that the super-conduits did so not only by permitting their name to be used, but also by recruiting other individuals to do the same. See 2 U.S.C. § 441f. The information suggests that the conduits and super-conduits' violations may have been committed knowingly and willfully. Specifically, the indictment states the conduits and super-conduits filled out donor cards and other contributor forms stating that they were making contributions themselves with their personal funds when, in fact, they used Mr. Noe's funds to make contributions; and some received instructions from Mr. Noe that, if asked in the future about the payments, they should lie and say the payments were a loan from Mr. Noe. At this time, we do not have specific information regarding the identity of the conduits and super-conduits.⁵ Thus, based on the foregoing, we recommend that the Commission find reason to believe unknown respondents knowingly and willfully violated 2 U.S.C. § 441f.⁶ We also recommend that the Commission approve the attached sample Factual and Legal Analysis, which we will send to the respondents

⁵ According to a website called Answers.com, conduits named in a federal affidavit include Lucas County (Ohio) Commissioner Maggie Thurber, Toledo City Councilwoman Betty Shultz, former Toledo Mayor Donna Owens and former Ohio State Representative Sally Perz. See <http://www.answers.com/topic/thomas-noe> (visited August 4, 2006). However, we believe it is appropriate to refer to the conduits and super-conduits as "unknown respondents" until this Office ascertains the identity of the individuals from a more reliable source.

⁶ We note that the circumstances of this matter are significantly different than the circumstances present in MUR 5849 (Bank of America), a case in which the Commission recently rejected a recommendation to find RTB that certain conduits violated 2 U.S.C. § 441f. In MUR 5849, the available information indicated that the conduits were subordinates/employees, who, given their status, arguably felt pressured into participating in the reimbursement activity engineered by their superiors. Here, there is no information indicating that we may have the same superior-subordinate relationship present. Instead, according to a DOJ press release, Mr. Noe admitted that he recruited and provided money to "friends and associates," who then used Mr. Noe's money to make contributions in their own name. DOJ Press Release dated May 31, 2006, located at http://www.usdoj.gov/opa/pr/2006/May/06_crm_337.html (visited August 4, 2006). Moreover, as discussed above, there is information indicating that the conduits in this matter may have acted with the knowledge that their conduct was unlawful, and at least two of the conduits may have been involved in recruiting others into making contributions in the name of another.

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1 once we learn their identities and addresses. We will also notify the Commission of the
2 respondents' identities once we obtain this information.

3 **C. Bush-Cheney '04, Inc.**

4 The information currently available does not suggest that Bush-Cheney '04, Inc.
5 knowingly accepted the contributions in the name of another at issue in this matter. Information
6 in the indictment suggests that the Committee was deceived with respect to the source of the
7 \$45,400 in contributions – i.e., the indictment states the conduits and super-conduits filled out
8 donor cards and other contributor forms for the fundraiser stating that they were making the
9 contributions themselves with their personal funds when, in fact, they used Mr. Noe's. In
10 addition, the indictment categorically states that the Committee did not know its 2003 Year End
11 Report incorrectly identified 24 conduits and super-conduits as the sources of the \$45,400.⁷
12 Thus, the available information suggests that Bush-Cheney '04, Inc. was not aware that the
13 contributions detailed above were unlawful. However, at this point in time, we do not
14 recommend that the Commission make a "no reason to believe" finding with respect to Bush-
15 Cheney '04. It is typically not our practice to defer to the conclusions of a referring agency
16 without first independently reviewing the evidence. Moreover, while our investigation would
17 focus primarily on identifying the conduits and super-conduits, during the course of the
18 investigation, information could surface regarding the liability of the Committee. Thus we will

⁷ A spokesman for the Republican National Committee reportedly stated that President Bush donated \$6,000 received directly from Mr. Noe and his wife to charity and will make other appropriate transfers "as directed by the court." See <http://www.columbusdispatch.com/election/election.php?story=18964> (visited August 3, 2006).

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1 make the appropriate recommendation, if necessary, with respect to Bush-Cheney '04 at the
2 appropriate time.⁸

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7 **IV. RECOMMENDATIONS**

- 8 1. Open a matter under review.
9
10 2. Find reason to believe that Thomas W. Noe knowingly and willfully violated
11 2 U.S.C. §§ 441f, 441a(a)(1)(A) and 441a(a)(3)(A).
12
13 3. Find reason to believe unknown respondents knowingly and willfully violated
14 2 U.S.C. § 441f.
15
16 4. Approve the attached Factual and Legal Analysis with respect to Thomas W. Noe.
17
18 5. Approve the attached sample Factual and Legal Analysis with respect to unknown
19 respondents.
20
21 6.
22
23
24 7. Approve the appropriate letters.

25
26 Lawrence H. Norton
27 General Counsel
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29
30
31 10/24/06
32 Date

33 BY: Rhonda J. Vosdigh
34 Rhonda J. Vosdigh
35 Associate General Counsel
for Enforcement

⁸ We note, however, that because this is an internally generated matter, a "no RTB" recommendation would not be required.

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Ann Marie Terzaken
Assistant General Counsel
Tracey L. Ligon
Attorney

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